

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)
)
Implementation of the Local Competition)
Provisions of the Telecommunications Act)
Of 1996)
)
Provision of Directory Listing Information)
Under the Telecommunications Act of 1934,)
As Amended)

CC Docket No. 96-115

CC Docket No. 96-98

CC Docket No. 99-273

To: The Commission

**PETITION FOR CLARIFICATION OR RECONSIDERATION
REGARDING DIRECTORY ASSISTANCE AND OPERATOR SERVICES**

I. INTRODUCTION AND SUMMARY

Pursuant to Part 1.106 of the Commission's Rules, SBC Communications Inc., on behalf of its subsidiaries, (collectively referenced as "SBC") submits its Petition for Clarification or Reconsideration ("PFR") of three limited aspects of the Commission's Third Report and Order in Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273 ("the SLI and OS/DA Order") released in this matter on September 9, 1999. First, SBC seeks clarification that the procedures specified in paragraph 68 of the Order to be followed when a carrier receives "multiple or conflicting requests" that "overburden [its] internal systems" apply not only to subscriber list data requests, but also to directory assistance ("DA") listing data requests. The procedures specified by the Commission are equally appropriate for both types of requests.

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Second, SBC seeks clarification, or in the alternative, limited reconsideration of the requirement that local exchange carriers (“LECs”) provide access to operator services (“OS”) and DA “adjunct features (e.g.: rating tables or customer information databases) necessary to allow competing providers full use of these services.”¹ What the Commission should have explicitly held was that LECs must provide OS/DA adjunct services in conjunction service in their “entirety” and not as an unbundled network element (“UNE”).

Third, the Commission should clarify, or in the alternative reconsider, the basis of the requirement contained in the Commission’s Rule 47 C.F.R. 51.317 (“Local Dialing Parity Rules”) that LECs “permit competing carriers to have access to and read the information in the LEC’s directory assistance database.”² As previously discussed, the OS/DA adjunct feature access requirement might also be interpreted as imposing an unbundling obligation.

While these requirements appear to create an unbundling obligation, they are imposed in the Local Dialing Parity Rule, which implements the dialing parity section of the Act [251(b)(3)], and not the unbundling section [251(c)(3)]. But section 251(b)(3) does not authorize unbundling. Rather, it is limited to requiring dialing parity between competing LECs, which, as specified in the Act, is a “nondiscrimination” obligation. Section 251(c)(3) is the only provision of the Act that authorizes unbundling. Accordingly, the Commission should reconcile its Order and the Local Dialing Parity Rules with section 251(c)(3) and its recently released UNE Remand Notice. In this regard, section 251(d)(2) of the Act requires that “UNEs” need to be made available only where they meet the so-called

¹ Order paragraphs 137-140

² 47 C.F.R. 51.317(c)(3)(ii).

necessary and impair test of that section. In the UNE Remand Proceeding,³ the Commission re-examined each UNE to determine if it meets the necessary and impair test. The News Release recently released in the UNE Remand Proceeding indicates that the Commission has already found that incumbent LECs do not have an obligation to provide OS/DA, as UNEs.⁴

In order to resolve this apparent conflict between the Order and the UNE Remand News Release, the Commission should specify that any unbundling obligations related to OS/DA, including the DA database access and, if applicable, the OS/DA adjunct feature access, are imposed under authority of section 251(c)(3). As such, these unbundling obligations are subject to the necessary and impair test and will be conformed to the Commission's findings in its upcoming Order in the UNE Remand Proceeding.

II. ARGUMENT.

A. THE SAME NONDISCRIMINATORY PROCEDURES SHOULD APPLY TO MULTIPLE AND CONFLICTING REQUESTS FOR SUBSCRIBER LIST AND DA LISTING DATA.

At paragraph 68 of the Order, the Commission wisely recognized that LECs will receive "multiple and conflicting" requests for subscriber listing that could "overburden a carrier's internal systems." For that reason, the Commission ruled that "[i]f a carrier finds that it cannot accommodate all of a group of [multiple and conflicting] requests within the time frames specified above, the carrier shall respond to those requests on a nondiscriminatory basis." The Commission also required that the LEC "inform each affected directory publisher of the conflicting requests" and "how it intends to resolve the conflict and the schedule" within 30 days. The Commission explained in paragraph 69 of the Order that

³ Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996; CC Docket No. 96-98; News Release, September 15, 1999 ("UNE Remand Proceeding"). The News Release of the Commission's Order has been released, but its accompanying Order has not yet been released.

⁴ *Id.*

these requirements “reconcile the directory publishers’ needs with [the Commission’s] desire not to impose any unnecessary burdens on carriers.” In particular, the Commission declined to “require carriers to modify their internal systems so they can accommodate each particular delivery schedule”

SBC applauds the Commission’s recognition that LECs may be placed in a situation where their existing systems cannot reasonably accommodate all the requests they may receive for subscriber lists.⁵ But, by their terms, paragraphs 68 and 69 of the Order are too narrowly focused on subscriber listing data, and should be expanded to include DA listing data requests.

All the circumstances and reasons that led the Commission to specify nondiscriminatory procedures for handling multiple and conflicting subscriber list requests apply with equal force to DA listing data requests. In each case, the LECs face the same potential for multiple and conflicting requests that overburden their systems. Moreover, the nondiscriminatory process specified by the Commission also properly balances the needs of competitive local exchange and toll carriers with the burden imposed upon LECs. Equally as important, there is no valid reason to “require carriers to modify their internal systems so they can accommodate each particular delivery schedule . . .” regarding DA listing data.

B. ACCESS TO OS/DA ADJUNCT FEATURES IS PROVIDED AS AN INTEGRAL PART OF THE SERVICE IN ITS ENTIRETY.

At paragraphs 137 to 140 of the Order, the Commission reaffirmed its finding in the Local Competition Second Report and Order requiring that “[o]perator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (e.g., rating tables and customer information databases) necessary to allow competing providers

⁵ In fact, SBC already provides subscriber list information in various formats on a standard basis that accommodate many

full use of these services.”⁶ (Emphasis supplied.) The Commission reasoned that, even though adjunct features are not telecommunications services, they must be supplied to competing providers in order to allow them to use OS/DA at levels equal to that employed by the providing LEC. The Commission used the example “that it would be impossible for a competing carrier to get nondiscriminatory access to a providing LEC’s directory assistance platform without access to rating tables and customer information databases.”⁷ Stated another way, the Commission found that “without such access, competing providers cannot make full use of the operator services and directory assistance.”⁸ The Commission properly acknowledged that LECs can take steps to protect their “intellectual property interest” including “appropriate license agreements and non-disclosure agreements” and limiting the use of the features to “the same manner as the providing LEC uses these features.”⁹

The above language appears to require only that when a LEC provide OS/DA to a competitor, its customers or regarding its traffic, it must provide the service in its “entirety” on a nondiscriminatory basis, including adjunct features. But there is other language in the Order that could be misconstrued as imposing an unbundling obligation regarding OS/DA adjunct features. The Commission should resolve this ambiguity and clarify that LECs must utilize OS/DA adjunct features on a nondiscriminatory basis only in conjunction with their provision of the service in its “entirety”. That duty is all that is required to meet the section 251(b)(3) nondiscriminatory dialing parity obligation.

Along the same line, the Commission should clarify that it did not intend to create an additional unbundling obligation regarding the line identification database (“LIDB”). LIDB is a “call-related

provider requests.

⁶ Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996; CC Docket No. 96-98; Second Report and Order, 11 FCC Rcd. at 19445-46, (“Local Competition Second Report and Order”) para. 105.

⁷ *Id.* para. 136, 138.

⁸ *Id.*

database” which incumbent LECs are already required to provide on an unbundled basis under the Commission’s Rule 47 C.F.R. 51.319(e). The Commission reaffirmed that obligation in the UNE Remand News Release.¹⁰ But in the Order, the Commission described adjunct features in a way that would appear to include LIDB.”¹¹ Unbundled access to LIDB is governed by Rule 47 C.F.R. 51.319(e) and the Commission should clarify that its Local Dialing Parity Rules simply require that LECs utilize LIDB on a nondiscriminatory basis, when they provide operator services on behalf of a competing LEC, or to its subscribers, and regarding its traffic.

C. ALL OS/DA UNBUNDLING REQUIREMENTS ARE GOVERNED BY SECTION 251(c)(3), ARE SUBJECT TO THE NECESSARY AND IMPAIR TEST, AND MUST CONFORM TO THE UNE REMAND ORDER WHEN RELEASED.

SBC requests that the Commission reconcile the unbundling requirements of its Order and Local Dialing Parity Rules on the one hand with section 251(c)(3), the necessary and impair test of section 251(d)(2), and its UNE Remand Notice on the other hand. In the Order, the Commission reaffirmed that LECs have an obligation to provide direct access to LEC DA databases under its Local Dialing Parity Rules. At the same time, as discussed, it is possible to argue that the Commission also reaffirmed or imposed an obligation to provide separate unbundled access OS/DA adjunct features under the Commission’s Local Dialing Parity Rules.

Yet, shortly after release of the Order, the Commission addressed whether OS/DA needs to be provided by incumbent LECs on an unbundled basis under the necessary and impair test of section 251(d)(2). In the UNE Remand News Release, the Commission determined that “incumbent LECs are

⁹ *Id.* para. 139.

¹⁰ Note 3, *Supra*.

¹¹ *See*, para. 136. In footnote 329 the Commission also described LIDB as a database used by operator service providers that “contain customer billing information (e.g., whether a customer will accept collect calls or third party billing.)” The

not required to unbundle OS/DA services pursuant to section 251(c)(3)” except in certain limited instances. Moreover, the Commission held that “[i]ncumbent LECs, however, remain obligated under the non-discrimination requirements of section 251(b)(3) to comply with the reasonable request of a carrier . . . to provide directory assistance listings and updates in daily electronic batch files.”¹² It is not logical that the Commission intended to address the unbundling of OS/DA in two parallel proceedings, or that it intended to reach conflicting results. For this reason, the Commission should clarify that its Dialing Parity Rules will be revised to confirm to its UNE Remand Order, when released.

There is severe doubt whether, in the first place, the Commission could in fact impose separate unbundling obligations as dialing parity obligations under section 251(b)(3). A review of sections 251 and 252 of the Act discloses that the Commission may only impose unbundling obligations upon incumbent LECs under section 251(c)(3), subject to limitations of section 251(d)(2) and the pricing requirements of section 252(d)(1). Thus, when Congress took the drastic step of imposing an unbundling obligation, it did so explicitly through the use of the defined term “network element” and the term “unbundled.”

language appears to refer to LIDB and could be misinterpreted as creating a new unbundling obligation under section 251(b)(3) applicable to all LECs.

¹² Note 3, *Supra*.

On the other hand, section 251(b)(3) makes no reference to “network element” or “unbundling” and applies to all LECs, including Competitive LECs. By its terms, section 251(b)(3) ensures “dialing parity” between competing LECs so there are “no unreasonable dialing delays” by requiring “nondiscriminatory access” to among other things, “operator services” and “directory assistance”. Section 251(b)(3) is, thus, a nondiscrimination section concerned with connectivity between LECs, not an unbundling provision.

Sections 251(d)(2) and 252(d)(1) confirm that Congress intended that the Commission only impose unbundling under section 251(c)(3.) Both these sections specify conditions and rules applicable to unbundling, but reference only section 251(c)(3). Also, under the Act, the unbundling duty is carefully limited, along with the other more onerous requirements of section 251(c), to incumbent LECs. Nowhere in the Act is the Commission authorized to impose unbundling duties on CLECs.

Equally as important, imposing a separate OS/DA unbundling requirement under section 251(b)(3) would be a poor policy choice, particularly since it fails the necessary and impair test. Since unbundled access to DA databases and to OS/DA adjunct features is not needed to compete or to provide a telecommunications service under section 251(d)(2), it also is not needed to achieve dialing parity. In fact, today many providers and competitive LECs are successfully providing OS/DA using their own platforms, without access to any LEC DA subscriber information database or adjunct OS/DA feature. The sharing of competitively sensitive data, such as prices and rates, also is fundamentally inconsistent with the efficient operation of a competitive market, and could introduce significant economic dislocations to the detriment of consumers.

A good example of why unbundled access to OS/DA adjunct features would be poor policy choice is rating tables. Rating tables are databases used to determine the price for a specific call based

upon the telephone number originating the call, the called number, the time of day, the duration of the call, and the rates of the carrier or reseller providing the service. Since each carrier's rate structure and prices are different, one carrier's rate table cannot reasonably be used to quote another carrier's rates. Therefore, CLECs and interchange carriers providing their own operator services need only have access to their own rate tables. An operator service provider, CLEC or interexchange carrier performing operator services on behalf of another carrier can readily obtain that carrier's rating tables, or the data needed to create one, directly from that carrier and has no legitimate need obtain them from another LEC.

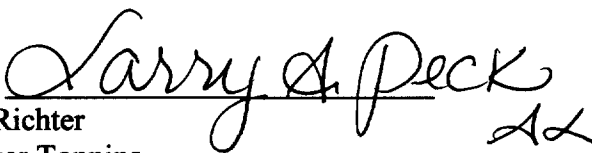
As can clearly be seen, LEC rating tables are not needed in order to achieve non-discriminatory dialing parity. The only need that a CLEC or operator services provider would seem to have for rating tables of LECs for whom it is not providing operator service is for non-dialing parity uses, such as marketing and sales purposes and, perhaps, as data it can use to set its own rates.

For these reasons, the Commission should find that any unbundling obligations regarding OS/DA, including DA database and OS/DA adjunct feature access, must have arisen from section 251(c)(3) and are, thereby, subject to the "necessary and impair" test of section 251(d)(2), and the finding the Commission will make when it releases its order in the UNE Remand Proceeding. Assuming that the UNE Remand Order is consistent with the Public Notice and eliminates the requirement that incumbent LECs unbundle OS/DA, the Commission should likewise eliminate any unbundling requirement from its Local Dialing Parity Rules.

III. CONCLUSION

For all the above reasons, the Commission should clarify or, in the alternative, upon reconsideration determine, that (i) the procedures specified in paragraph 68 of the Order for multiple and conflicting requests also apply to DA listing data requests; (ii) LECs are not required to provide unbundled access to OS/DA adjunct features separate from OS/DA service provided in its entirety; and (iii) unbundled access to the DA database and to OS/DA adjunct features was imposed under section 251(c)(3), and will be conformed to the Commission's Order in the UNE Remand Proceeding, when released.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the Petition for Clarification or Reconsideration Regarding Directory Assistance and Operator Services has been served on all parties of record, via first class mail, postage prepaid, on this 27th day of October, 1999.

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